

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Damien Michel Andre CAMELOT, *et al.*

Title: ENCAPSULATED CRYSTALLINE LACTIC ACID

Appl. No.: 10/631,831

Filing Date: 08/01/2003

Patent No.: 7,687,092

Grant Date: 3/30/2010

Examiner: Helen F. Pratt

Art Unit: 1794

Confirmation 1704

Number:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR
PATENT UNDER 37 C.F.R. § 1.705(d)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants have determined that the captioned patent is entitled to 1,882 days of Patent Term Adjustment (PTA), not 1,770 days as determined by the United States Patent and Trademark Office. According to Applicants' calculations, as shown on the attached PTA Calculation sheet, the relevant "delays" under 37 CFR §§1.702, 1.703 and 1.704 are as follows:

(a) Total PTO delay: 2,006 days

(b) Total Applicant delay: 124 days

Final PTA Determination under 37 CFR §1.703(f): 1,882 days

In accordance with § 1.705(b)(2)(ii), both the relevant dates as specified in §§1.703(a) through (e) for which an adjustment is sought, and the adjustment as specified in § 1.703(f) to which the patent is entitled, are represented in the attached PTA Calculation (“PTO Days”). As well, in accordance with §1.705(b)(2)(iv)(A), circumstances during the prosecution of the corresponding patent application that constitute a failure to engage in reasonable efforts to conclude processing or examination as set forth in § 1.704 are also represented in the PTA Calculation (“Applicant Days”).

A **122 day** discrepancy between Applicants’ calculation and the PTO’s calculation appears to arise from the days between filing of a Notice of Appeal on September 28, 2007 and filing of a Brief on Appeal on January 28, 2008. 37 CFR 1.703(e), however, expressly provides that delays caused by successful appellate review of an adverse determination of patentability, as in the instant case, is the sum of the number of days in the period “beginning on the date on which a **notice of appeal** . . . was filed and ending on the date of a final decision in favor of the applicant....” (emphasis added).¹ Thus, Applicants submit that the Office’s calculation of PTO delay from the day of filing of the Brief on Appeal and not the day the Notice of Appeal was filed (a difference of 122 days) is in error.

Applicants therefore respectfully request that the patent be accorded 1,882 days PTA.

Fees in the amount of \$200.00 set forth in 37 C.F.R. § 1.18(e) to cover the fee for this request are being paid by credit card via EFS-Web. However, because the present PTA error is due to a Patent Office error in interpreting and applying PTA statute(s)—and not an error of Applicants, a refund of the fee is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. § 1.705, or credit any overpayment, to

¹ This provision is consistent with 35 USC § 154(b)(1)(C), which provides that in cases where appellate review by the Board of Patent Appeals and Interferences results in reversal of an adverse determination of patentability, “the term of the patent shall be extended 1 day for each day of the *pendency of the proceeding, order, or review, as the case may be.*” (Emphasis added.)

Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

By 

Date 28 May 2010

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Patent Term Adjustment Calculation System						
Add a new event to this case						
	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days	
Edit Delete	Application Filing Date	08/01/2003	0			
Edit Delete	Notice to File Missing Parts	10/30/2003	90			
Edit Delete	Response to Notice to File Missing Parts	11/14/2003	105			
	14 month From Application date	10/01/2004	427			
	3 Year Period Starts	08/01/2006	1,096			
Edit Delete	Restriction Requirement	09/29/2006	1,155	(728)		
Edit Delete	Restriction Requirement Response Received at PTO	10/20/2006	1,176			
Edit Delete	Non-Final Office Action	11/17/2006	1,204			
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/16/2007	1,295			
Edit Delete	Suppl. Reply under 1.704(c)(8) received at PTO (including amendment)	03/21/2007	1,328		33	
Edit Delete	Final Office Action	03/29/2007	1,336			
	Final Office Action + 3 months	06/29/2007	1,428			
Edit Delete	Final Office Action Response Received at PTO	07/26/2007	1,455			
Edit Delete	Advisory Action	08/30/2007	1,490			
Edit Delete	Notice of Appeal Received at PTO	09/28/2007	1,519		91	
Edit Delete	Notice of Non-Compliant Appeal Brief	01/16/2008	1,629			
Edit Delete	Appeal Brief Received at PTO	01/28/2008	1,641			
Edit Delete	Examiner's Answer Mailed	03/17/2008	1,690			
Edit Delete	Reply Brief Received at PTO	05/15/2008	1,749			

Edit Delete	Appeal Decided by Appeal Board; Some Rejections Reversed	07/02/2009	2,162	(644)		
	Appeal Decided + 4 months	11/02/2009	2,285			
Edit Delete	Notice of Allowance	11/12/2009	2,295	(10)		
Edit Delete	Appeal Brief Received at PTO (Non-Compliant)	11/27/2009	2,310			
Edit Delete	Issue Fee Paid	02/04/2010	2,379			
Edit Delete	Patent Grant Date	03/30/2010	2,433	(1337) 2006		
Totals:				2,006	124	
PTA:				1,882		

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Version: 3.02.05

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IP: 10.99.200.25

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